BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MONA S. CARTHEL Claimant)
VS.)
) Docket No. 1,013,468
MIMOSA ARMS, d/b/a/ KEY MANAGEMENT CO.)
Respondent)
AND)
AMERICAN HOME ASSURANCE, c/o AIG)
Insurance Carrier)

ORDER

Respondent and its insurance carrier (respondent) appealed the June 22, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

ISSUES

In the June 22, 2004 Order, Judge Clark denied claimant's request for additional medical treatment, including her request for a change of physicians. Initially, at the November 25, 2003 hearing before the ALJ, respondent was ordered to pay benefits. Additionally, Paul Stein, M.D. was to act as the treating physician. Thereafter, following a hearing on claimant's motion for a change of physician claimant was also seen by Philip R. Mills, M.D., on May 5, 2004 for a court-ordered independent medical examination. Dr. Mills determined the claimant to be at maximum medical improvement, and continued her on restrictions. However, claimant argues that, while Drs. Stein and Mills provided medical testing and restrictions, they failed to treat her. The claimant argues the ALJ abdicated his jurisdiction and authority by failing to grant the claimant's request for a change of physicians. This is the only issue on this appeal.

Respondent contends that claimant has a history of prior neck problems dating back to 1994 and 1996. Respondent argues that claimant has had two competent medical opinions which state that she does not need additional medical treatment for her alleged neck injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

The issue raised by claimant is not subject to review from a preliminary hearing order. Accordingly, this appeal should be dismissed.

This is an appeal from a preliminary hearing order. Consequently, not every alleged error is subject to review. The Board can review preliminary hearing orders in which an ALJ has exceeded his or her jurisdiction.¹ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.²

The issues of whether a worker needs ongoing medical treatment or whether the employer is failing to provide medical treatment are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test or jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

¹ K.S.A. 44-551(b)(2)(A).

² Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ Allen v. Craig, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

Claimant's argument that the ALJ exceeded his jurisdiction by failing to appoint a doctor to treat claimant is without merit. At a preliminary hearing, an ALJ has the authority to determine whether an injured worker is in need of additional medical treatment, or instead, has reached maximum medical improvement. And, if it is the latter, the ALJ may deny additional treatment.

WHEREFORE, the Appeals Board dismisses this appeal.

II IO OO ONDLINED.		
Dated this	day of November 2004.	

IT IS SO ORDERED

BOARD MEMBER

Stephen J. Jones, Attorney for Claimant
 Christopher J. McCurdy, Attorney for Respondent and American Home Assurance
 c/o AIG

John D. Clark, Administrative Law Judge Paula S. Greathouse, Workers Compensation Director